proper dividend had been declared on the preferred and an equal dividend on the common stock." No cases are cited which justify this conclusion. In *Allen* v. *Londonderry, etc., Ry. Co.* (1877), 25 Week. Rep. 524, the preferred stockholders were entitled to share in extra dividends only by virtue of a resolution to that effect, and not as a matter of right. This right of participation is also expressly conferred in by-laws or acts of incorporation. *Railroad* v. *Belfast* (1885), 77 Me. 445; *Cotting* v. *N. Y. and New England Railroad Co.* (1886), 54 Conn. 156. Except when, as in the above cases, a matter of contract it never seems to have been claimed by preferred stockholders. Had the statute declared the common stockholders should be paid 10 per cent after the payment of a like per cent to the preferred stockholders, there would be no reason why the two classes should not share alike any further dividends. Probably the fact bears strongly on the rights of the preferred stockholders that the payment to them of extra dividends evoked no protest from the other stockholders. Possibly, too, "participate" has some significance in the enactment "that the holders of all the other stock of the company should not be entitled to participate in any future dividend of the profits of the company until, etc." We find no case quite similar to this.

COVENANTS—KNOWLEDGE BY THE GRANTEE OF INCUMBRANCE.—The grantor conveyed free "of all easements." The premises were subjected to a joint right of way of adjoining owners to the use of certain cess pools, maintained partly on these premises and partly on adjoining property. *Held,* the purchaser is entitled to enforce the covenant although he knew of the incumbrance when he bought. *Patterson* v. *Freihofer et al.* (1906), — Pa. —, 64 Atl. Rep. 326.

It seems quite clear that by making this specific covenant against "easements" instead of a covenant against incumbrances, which is more often used, the parties have effectively avoided any need of application by the court of either of the conflicting rules in cases where there are covenants against incumbrances alleged to have been broken by an open notorious easement affecting the physical condition of the property. Many courts hold that the covenant against incumbrances is not broken by an open notorious easement known to the parties. *Desvergers* v. *Willis,* 56 Ga. 515; *Lallande* v. *Wentz,* 18 La. Ann. 289; *Holmes* v. *Danforth,* 83 Me. 139; *Janes* v. *Jenkins,* 34 Md. 1; *Beach* v. *Hudson River Land Company* (1903), 65 N. J. Eq. 426; *Bacharach* v. *Von Eiff* (1902), 74 Hun. 533; *Memmert* v. *McKeen,* 112 Pa. St. 315; *Smith* v. *Hughes,* 50 Wis. 620. Contra: *Hubbard* v. *Martin,* 10 Conn. 422; *Weiss* v. *Binninn* (1899), 178 Ill. 241; *Quick* v. *Taylor,* 113 Ind. 540; *Harlow* v. *Thompson,* 32 Mass. 66; *Kellogg* v. *Malin,* 50 Mo. 496; *Huyck* v. *Andrews,* 113 N. Y. 81; *Copeland* v. *McAdory,* 100 Ala. 553.

CRIMINAL LAW—CONVICTION OF LESSER OFFENSE AS ACQUITTAL OF GRAVER OFFENSE—FORMER JEOPARDY—REMANDING CAUSE FOR SENTENCE.—Defendant being on trial for murder was found guilty of manslaughter. The verdict was set aside on appeal and, upon a second trial, a verdict of murder in the first degree was rendered and defendant sentenced to life imprisonment.